

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Oct 06, 2021**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

ELISABETH S.,

Plaintiff,

v.

KILOLO KIJAKAZI,  
ACTING COMMISSIONER OF  
SOCIAL SECURITY,<sup>1</sup>

Defendant.

No. 1:20-CV-03122-JTR

ORDER GRANTING PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT AND REMANDING FOR  
ADDITIONAL PROCEEDINGS

**BEFORE THE COURT** are cross-motions for summary judgment. ECF No. 18, 19. Attorney D. James Tree represents Elisabeth S. (Plaintiff); Special Assistant United States Attorney Jeffrey E. Staples represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. ECF No. 6. After reviewing the administrative record and the

<sup>1</sup> Kilolo Kijakazi became the Acting Commissioner of Social Security on July 9, 2021. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Kilolo Kijakazi is substituted for Andrew M. Saul as the defendant in this suit. No further action need be taken to continue this suit. *See* 42 U.S.C. § 405(g).

1 briefs filed by the parties, the Court **GRANTS** Plaintiff's Motion for Summary  
 2 Judgment; **DENIES** Defendant's Motion for Summary Judgment; and  
 3 **REMANDS** the matter to the Commissioner for additional proceedings pursuant to  
 4 42 U.S.C. § 405(g).

### 5 JURISDICTION

6 Plaintiff filed an application for Supplemental Security Income on March 7,  
 7 2016, alleging disability since January 27, 2014,<sup>2</sup> due to Schizophrenia. Tr. 89,  
 8 255. The application was denied initially and upon reconsideration. Tr. 88-99, 100-  
 9 111. Administrative Law Judge (ALJ) M.J. Adams held a video hearing on  
 10 October 17, 2017, Tr. 62-87, and issued an unfavorable decision on April 25, 2018.  
 11 Tr. 112-129. Plaintiff requested review of the ALJ's decision by the Appeals  
 12 Council. Tr. 211-214. In an order dated March 22, 2019, the Appeals Council  
 13 vacated the ALJ's decision and remanded the case back to the ALJ.<sup>3</sup> Tr. 130-134.  
 14 The same ALJ held a second hearing on September 18, 2019, Tr. 1495-1527. The  
 15 ALJ issued a second unfavorable decision dated September 30, 2019. Tr. 32-56.  
 16 On October 8, 2019, Plaintiff requested review of the ALJ's decision by the  
 17 Appeals Council. Tr. 252-254. The Appeals Council denied the request for review  
 18 on July 9, 2020. Tr. 1-7. The ALJ's September 30, 2019, decision is the final

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19 <sup>2</sup> Plaintiff later amended the alleged onset date to the protected filing date,  
 20 March 7, 2016, for administrative purposes. Tr. 66, 115.

21 <sup>3</sup> The Appeals Council found that the RFC was not supported by substantial  
 22 evidence, and that the decision mischaracterized evidence by showing significant  
 23 improvement in psychotic symptoms due to compliance with medication, when  
 24 treatment notes not discussed in the decision reflected the claimant still often  
 25 reported auditory and visual hallucinations and exhibited delusional behavior  
 26 during a time when she was compliant with her medications and there was no  
 27 evidence she was engaging in substance abuse. Tr. 130-134.  
 28

1 decision of the Commissioner, which is appealable to the district court pursuant to  
 2 42 U.S.C. § 405(g). Plaintiff filed this action for judicial review on August 10,  
 3 2020. ECF No. 1.

#### 4 **STATEMENT OF FACTS**

5 Plaintiff was 26 years old on the application date. Tr. 47. Plaintiff has a 10<sup>th</sup>  
 6 grade education and does not have a GED. Tr. 1499. Plaintiff has a limited work  
 7 history and last worked sorting fruit in 2008. Tr. 69, 271, 281-82. Plaintiff's mental  
 8 health diagnoses include unspecified schizophrenia or other psychotic disorder,  
 9 and substance use disorder(s). Tr. 37, 384, 388-89, 391, 451, 458, 1106. Treatment  
 10 has included psychiatric hospitalization, counseling, and antipsychotic medications  
 11 including Risperdal, Abilify, and Invega (monthly injection), and antidepressants.  
 12 Tr. 422, 504, 530. Plaintiff has a long history of substance abuse beginning at age  
 13 14 or 15 and was first diagnosed with amphetamine dependence in 2009. Tr. 383,  
 14 694. Plaintiff reported she was three years sober in 2019. Tr. 355, 1229.

15 Plaintiff identifies as transgender and has legally changed her name to  
 16 Elisabeth, and at the 2019 hearing she reported she prefers she/her pronouns. Tr.  
 17 66-67.<sup>4</sup>

#### 18 **STANDARD OF REVIEW**

19 The ALJ is responsible for determining credibility, resolving conflicts in  
 20 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,  
 21 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de novo*, with  
 22 deference to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*,  
 23 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed  
 24 only if it is not supported by substantial evidence or if it is based on legal error.

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25  
 26 <sup>4</sup> The Court uses Plaintiff's preferred pronoun, but portions of the ALJ  
 27 decision and some medical records refer to Plaintiff as "he," and these will be  
 28 quoted as they appear in the record.

1 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is  
 2 defined as being more than a mere scintilla, but less than a preponderance. *Id.* at  
 3 1098. Put another way, substantial evidence is such relevant evidence as a  
 4 reasonable mind might accept as adequate to support a conclusion. *Richardson v.*  
 5 *Perales*, 402 U.S. 389, 401 (1971). If the evidence is susceptible to more than one  
 6 rational interpretation, the Court may not substitute its judgment for that of the  
 7 ALJ. *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of Social Sec. Admin.*,  
 8 169 F.3d 595, 599 (9th Cir. 1999). If substantial evidence supports the  
 9 administrative findings, or if conflicting evidence supports a finding of either  
 10 disability or non-disability, the ALJ's determination is conclusive. *Sprague v.*  
 11 *Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987). Nevertheless, a decision  
 12 supported by substantial evidence will be set aside if the proper legal standards  
 13 were not applied in weighing the evidence and making the decision. *Browner v.*  
 14 *Secretary of Health and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988).

### 15 SEQUENTIAL EVALUATION PROCESS

16 The Commissioner has established a five-step sequential evaluation process  
 17 for determining whether a person is disabled. 20 C.F.R. § 416.920(a); *Bowen v.*  
 18 *Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through four, the claimant  
 19 bears the burden of establishing a prima facie case of disability. *Tackett*, 180 F.3d  
 20 at 1098-1099. This burden is met once a claimant establishes that a physical or  
 21 mental impairment prevents the claimant from engaging in past relevant work. 20  
 22 C.F.R. § 416.920(a)(4). If a claimant cannot perform past relevant work, the ALJ  
 23 proceeds to step five, and the burden shifts to the Commissioner to show (1) the  
 24 claimant can make an adjustment to other work; and (2) the claimant can perform  
 25 specific jobs that exist in the national economy. *Batson v. Commissioner of Social*  
 26 *Sec. Admin.*, 359 F.3d 1190, 1193-1194 (2004). If a claimant cannot make an  
 27 adjustment to other work in the national economy, the claimant will be found  
 28 disabled. 20 C.F.R. § 416.920(a)(4)(v).

**ADMINISTRATIVE FINDINGS**

On September 30, 2019, the ALJ issued a decision finding Plaintiff was not disabled as defined in the Social Security Act. Tr. 32-49.

At step one, the ALJ found Plaintiff had not engaged in substantial gainful activity since the application date. Tr. 37.

At step two, the ALJ determined Plaintiff had the following severe impairments: unspecified schizophrenia and substance use disorder. *Id.*

At step three, the ALJ found Plaintiff did not have an impairment or combination of impairments that met or medically equaled the severity of one of the listed impairments. Tr. 38.

The ALJ assessed Plaintiff's Residual Functional Capacity (RFC) and found she could perform a full range of work at all exertional levels, but with the following nonexertional limitations:

she can understand, remember and carry out simple instructions; she can exercise simple workplace judgement; she can perform work that is learned on the job in less than 30 days by short demonstration and practice or repetitions; she can respond appropriately to supervision, but should not be required to work in close coordination with coworkers where teamwork is required; she can deal with occasional changes in the work environment; and she can do work that requires no interaction with the general public to perform the work tasks but this does not preclude a working environment where the public is present.

Tr. 39.

At step four, the ALJ found Plaintiff had no past relevant work. Tr. 47.

At step five the ALJ found that, considering Plaintiff's age, education, work experience and residual functional capacity, there were jobs that existed in significant numbers in the national economy that Plaintiff could perform,

1 specifically identifying the representative occupations of kitchen helper, laundry  
2 worker, and industrial cleaner. Tr. 48.

3 The ALJ thus concluded Plaintiff was not under a disability within the  
4 meaning of the Social Security Act at any time from the date the application was  
5 filed through the date of the decision. Tr. 49.

## 6 ISSUES

7 The question presented is whether substantial evidence supports the ALJ's  
8 decision denying benefits and, if so, whether that decision is based on proper legal  
9 standards.

10 Plaintiff contends the Commissioner erred by (1) improperly evaluating  
11 medical opinion evidence (2) improperly rejecting Plaintiff's subjective  
12 complaints.

## 13 DISCUSSION

### 14 1. Medical opinions

15 Plaintiff argues the ALJ erred in evaluating the medical opinion evidence.  
16 ECF No. 18 at 2. Plaintiff argues the ALJ improperly rejected the opinions from  
17 Dr. R.A. Cline, Psy.D and Brittany Rumsey, MSW. *Id.* at 9-13

18 When a treating or examining physician's opinion is contradicted by another  
19 physician, the ALJ must offer "specific and legitimate" reasons to reject the  
20 opinion. *Andrews v. Shalala*, 53 F.3d 1035, 1041 (9th Cir. 1995); *Lester v. Chater*,  
21 81 F.3d 821, 830-31 (9th Cir. 1995). The specific and legitimate standard can be  
22 met by the ALJ setting out a detailed and thorough summary of the facts and  
23 conflicting clinical evidence, stating their interpretation thereof, and making  
24 findings. *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989). The ALJ is  
25 required to do more than offer her conclusions, she "must set forth [her]  
26 interpretations and explain why they, rather than the doctors', are correct." *Embrey*  
27 *v. Bowen*, 849 F.2d 418, 421-22 (9th Cir. 1988).  
28

1 An ALJ may discount the opinion of an “other source,” such as a MSW, if  
 2 they provide “reasons germane to each witness for doing so.” *Molina v. Astrue*,  
 3 674 F.3d 1104, 1111 (9th Cir. 2012).

4 *a. Dr. Cline*

5 Plaintiff attended two consultative psychological exams with Dr. Cline for  
 6 Washington state Department of Social and Health Services (DSHS), the first on  
 7 March 22, 2016, and the second on December 20, 2017. Tr. 382-386, 1104-1112.

8  
 9 *i. Dr. Cline’s March 2016 evaluation*

10 At the March 2016 exam, Dr. Cline administered a clinical interview and  
 11 mental status exam and diagnosed Plaintiff with unspecified schizophrenia  
 12 spectrum disorder and other psychotic disorder NOS (primary schizophrenia vs.  
 13 substance induced psychosis); methamphetamine use disorder, marked, in early  
 14 full remission; cocaine use disorder, moderate in early full remission; and alcohol  
 15 use disorder, moderate, in early full remission. Tr. 383-84. Dr. Cline opined  
 16 Plaintiff was overall markedly impaired and had multiple moderate and marked  
 17 limitations in specific areas of work-related functioning.<sup>5</sup> Tr. 384-85.

18 The ALJ gave Dr. Cline’s 2016 opinion little weight, because Dr. Cline  
 19 reviewed no records and relied solely on Plaintiff’s self-report “which the record  
 20 shows is unreliable.” Tr. 45. The ALJ found Dr. Cline “provides no rational basis  
 21 for marked limitations particularly in light of the claimant’s activities of daily  
 22 living, which include tending to her personal care needs and managing her  
 23

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24  
 25 <sup>5</sup> A “marked” severity rating is defined on the DSHS evaluation form as  
 26 “mean[ing] a very significant limitation in the ability to perform one or more basic  
 27 work activity,” and a “moderate” severity rating is defined as “significant limits on  
 28 the ability to perform one or more basic work activity.” *Id.*



1 finances.” The ALJ concluded “Dr. Cline suggests that the claimant is not a  
2 malingerer. However, the claimant misrepresented her alcohol use to Dr. Cline as  
3 noted.” Tr. 45.

4 Plaintiff argues the ALJ was incorrect to give Dr. Cline’s 2016 opinion little  
5 weight, because Dr. Cline examined Plaintiff, provided her own observations and  
6 diagnoses, and administered a mental status exam, all of which entailed clinical  
7 observations. ECF No. 18 at 14. Plaintiff argues the ALJ did not point to any  
8 medical records that contradict Dr. Cline’s opinion, and that there are significant  
9 differences between tending to personal care and sustaining activity over a normal  
10 workday on an ongoing, appropriate, and independent basis. ECF No. 18 at 13-15.

11 Defendant argues the ALJ reasonably rejected Dr. Cline’s 2016 opinion  
12 because Dr. Cline did not review any records, several results of a mental status  
13 examination were normal, and the others were just a recapitulation of Plaintiff’s  
14 statements about auditory hallucinations. ECF No. 19 at 7-8. Defendant argues that  
15 because she had not reviewed any records, Dr. Cline was not aware such symptoms  
16 improved with treatment. *Id.*

17 The Court finds the ALJ erred by failing to provide “specific and legitimate  
18 reasons” to reject Dr. Cline’s opinions. While an ALJ may discount a medical  
19 opinion that is “based to a large extent on a claimant’s self-reports that have been  
20 properly discounted as incredible,” *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th  
21 Cir. 2008), there must be some evidentiary basis for such a conclusion. *Ghanim v.*  
22 *Colvin*, 763 F.3d 154, 1162 (9th Cir. 2014).

23 Dr. Cline’s 2016 opinion was based on her examination, interview, and  
24 observation of Plaintiff via mental status exam. Tr. 386. While Dr. Cline did not  
25 review Plaintiff’s medical records, her opinion is consistent with the record as a  
26 whole especially in early 2016, as Plaintiff was just beginning to seek and engage  
27 with treatment. The evidence available at that time reveals Plaintiff consistently  
28



1 reported and presented with psychotic symptoms including audio and visual  
2 hallucinations and was frequently observed responding to internal stimuli. Tr. 387-  
3 38, 393, 399, 417-19.

4 The ALJ also failed to cite to any longitudinal evidence that was  
5 unsupportive of Dr. Cline's 2016 opinion. Tr. 45. Instead, the ALJ concluded that  
6 all Plaintiff's self-reporting was unreliable because Plaintiff reported alcohol use to  
7 another evaluator but did not report recent alcohol use to Dr. Cline. Tr. 45, 345. In  
8 fact, the ALJ consistently picks out one or two sentences from these early 2016  
9 evaluations and uses it out of context to discredit Plaintiff. Tr. 387-38, 393, 399,  
10 417-19. The ALJ concluded Plaintiff's reporting was unreliable, and therefore  
11 untruthful, without addressing abnormal mental status exam findings, or the  
12 concern expressed by mental health providers during early 2016 visits that Plaintiff  
13 was unable to report accurately due to psychosis. *Id.* While the ALJ infers  
14 malingering, there is no evidence in this record that any provider has found or  
15 suggested malingering. Dr. Cline also administered testing for effort at each of her  
16 exams. Tr. 383, 1105. In 2016 Dr. Cline reported "her score of 12 indicates an  
17 above average level of effort and cooperation with the task and decreases the  
18 likelihood that she is malingering" Tr. 383. In 2017 she reported "her score of 15  
19 indicates an excellent level of effort and cooperation with the task and diminished  
20 the likelihood that she is malingering." Tr. 1105.

21 As for the ALJ's conclusion that Dr. Cline "provides no rational basis for the  
22 marked limitations particularly in light of claimant's activities of daily living,  
23 which includes tending to her personal care needs and managing her finances," this  
24 is also not a specific and legitimate reason to reject Dr. Cline's 2016 opinion. The  
25 ALJ gave no examples of personal care needs or what finances Plaintiff managed.  
26 Tr. 45. Absent specific details simply listing general categories of activities is not  
27 substantial evidence. *Trevizo v. Berryhill*, 871 F.3d 664, 676 (9th Cir. 2017).  
28

1 While some portions of Plaintiff's mental status exam were within normal  
2 limits, the ALJ did not discuss abnormal findings. Dr. Cline observed Plaintiff's  
3 speech was within normal limits "at first, but occasionally lapsed into  
4 disorganized, circumstantial speech." Tr. 385. Dr. Cline also observed Plaintiff's  
5 perception was not within normal limits, reporting that:

6 When asked about AH/VH [auditory and visual hallucinations] claimant  
7 stated "I hear voices that are not there and they tell me like what am I doing  
8 and I hear crying sounds and they get into deep details with me, like what  
9 money I have and what's my social and they try to like confuse my thoughts  
10 [sic]. They say that my name is Isaac, and it's Elizabeth, but I changed it  
11 from Isaac." He notes that he recently started on medication which has  
12 helped decrease these to a certain extent. He described these as "outside my  
13 head" and notes that they got louder when he wasn't happy. He has been  
14 experiencing this for the last five years. He notes that he has also had VH.  
15 He denied any ongoing or historical paranoia. He does endorse some  
16 delusional thought processes in the form of "I can eat glitter and throw it out  
17 as magic, and I pick up rocks and I swallow them because I feel like it's  
18 magic."

19 Tr. 386

20 Dr. Cline observed Plaintiff's abstract thought, insight, and judgment were  
21 also outside of normal limits, and that Plaintiff made some errors on memory  
22 testing. Tr. 386. The ALJ does not discuss these abnormal findings and does not  
23 discuss similar findings throughout the record, focusing instead on times Plaintiff  
24 self-reported she was doing well. For example, under the section of the ALJ's  
25 decision titled "The longitudinal record shows overall improvement in symptoms  
26 and function with medication," the first bullet point is a quote from Plaintiff during  
27 Dr. Cline's 2016 evaluation, noting "on mental status exam in March 2016,  
28 [plaintiff] described her mood as "a 10, and 10 is good. I'm always in a good  
mood." Tr. 43.

1 The ALJ failed to offer specific and legitimate reasons for discounting Dr.  
2 Cline's 2016 opinion and failed to offer any evidence this opinion was based  
3 largely on Plaintiff's reports, as opposed to Dr. Cline's professional judgment and  
4 objective observations.

5 *i. Dr. Cline's 2017 evaluation*

6 Dr. Cline evaluated Plaintiff for a second time on December 20, 2017. Tr.  
7 1104-12. Dr. Cline indicated she reviewed her previous assessment from 2016. Tr.  
8 1104. Dr. Cline again administered a clinical interview and mental status exam and  
9 diagnosed Plaintiff with unspecified schizophrenia spectrum and other psychotic  
10 disorder (r/o substance induced). Tr. 1106. She explained "although it has now  
11 been two years since her last use of substances it can take up to five years for the  
12 brain to fully recover, or recover as much as it is going to," and noted Plaintiff  
13 continued to "endorse ongoing AH, VH and paranoia, as well as some potential  
14 delusional thought processes despite being medicated at this time." Tr. 1104. Dr.  
15 Cline opined Plaintiff was overall moderately impaired and had multiple mild and  
16 moderate limitations in specific areas of work-related functioning. Tr. 1106-07.  
17 She opined Plaintiff:

18 may be as stable as she is going to be, and may be able to pursue some form  
19 of part-time sheltered employment or education at this time, such as through  
20 the Goodwill. Ongoing mental health treatment is recommended, but can be  
21 concurrent with employment.

22 Tr. 1107.

23 The ALJ gave partial weight to Dr. Cline's 2017 opinion. Tr. 47. The ALJ  
24 noted Dr. Cline "assessed mild to moderate limitation in cognitive and social  
25 functioning for an estimated 6-9 month period" and also noted Dr. Cline's  
26 explanation that Plaintiff was only two years removed from the substance abuse at  
27 that time and that it typically took "up to five years for the brain to recover." *Id.*  
28

1 The ALJ then listed the portions of Dr. Cline’s mental status exam that were within  
2 normal limits. Tr. 47. The ALJ concluded that there was no evidence to support a  
3 need for sheltered employment, because plaintiff had never hurt anyone, the record  
4 showed Plaintiff’s symptoms were mostly managed by medication, and Plaintiff  
5 has not tried to work since 2000. Tr. 47.

6 Plaintiff argues that Dr. Cline’s limitation to a part-time sheltered work  
7 environment was well supported by Plaintiff’s report of symptoms and her  
8 performance on mental status exams, and that the limitation to part-time sheltered  
9 employment is consistent with other opinion evidence and Plaintiff’s reliance on  
10 her mother and other family members. ECF No. 18 at 13-16.

11 Defendant argues the ALJ reasonably rejected Dr. Cline’s 2017 opinion  
12 because it conflicts with her 2016 opinion and Plaintiff’s symptoms are mostly  
13 managed by medication. ECF. No. 19 at 8.

14 The Court finds the ALJ failed to offer specific and legitimate reasons for  
15 discounting Dr. Cline’s 2017 opinion that Plaintiff “may be as stable as she is  
16 going to be, and may be able to pursue some form of part-time sheltered  
17 employment or education at this time.”

18 First, the ALJ fails to mention Dr. Cline’s limitation to part-time work. Tr.  
19 47. Additionally, the ALJ’s assertion Plaintiff had not tried to work since 2000 is  
20 incorrect, as Plaintiff was 11 years old in 2000.<sup>6</sup> Plaintiff did testify that he had not  
21 tried to hurt anyone in the past 5 years. Tr. 1509. However, the ALJ did not  
22 consider Plaintiff’s additional testimony that “I hear voices, and they tell me ... to  
23 do things and I just wouldn’t want to hurt someone or accidentally hurt myself.” Tr.  
24 1509. The ALJ did not discuss evidence of concern by family members that  
25

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26  
27 <sup>6</sup> This appears to be a typo in the 2019 hearing transcript, however, the ALJ  
28 used this incorrect information two places in the 2019 decision. Tr. 40, 47, 1501.

1 Plaintiff is easily distracted by mental health symptoms and might accidentally hurt  
2 herself or someone else. Tr. 952, 1345.

3 As for the ALJ's conclusion that Plaintiff's symptoms are mostly managed  
4 by medication, the ALJ's decision focused on Plaintiff's self-reports of doing  
5 better. However, Plaintiff's self-reports are often inconsistent with objective  
6 findings. It is an error to single out a few or temporary periods of well-being from  
7 a sustained period of impairment and rely on those instances to discredit Plaintiff.  
8 *Garrison v. Colvin*, 759 F.3d 995, 1018 (9th Cir. 2014). For example, the ALJ  
9 noted in Plaintiff's March 2016 report she was "feeling better and able to  
10 concentrate more" and that while she "indicated she was seeing things," she was  
11 still able to go to school with her sister and hang out while her sister was in class.  
12 Tr. 43. However, there is no mention by the ALJ that in the same appointment she  
13 also reports she is seeing "the devil and ghosts," and that her provider observed she  
14 presented with disorganized thoughts and was more depressed than the last session.  
15 Tr. 445. The ALJ noted how in June 2016 Plaintiff was functioning at a higher  
16 level, had a brighter affect, and reported breakthrough hallucinations "once per  
17 day" that were not bothersome. Tr. 43. However, at the same medication  
18 management appointment in June 2016, her provider documented receiving an  
19 email from Plaintiff's therapist, who reported "a rapid decline in . . . functioning,  
20 future thinking, goal setting and hygiene since transitioning onto Abilify." She  
21 indicated Plaintiff was describing "bizarre" thoughts around "celebrities and magic  
22 once again." Tr. 419. The ALJ's conclusion Plaintiff's symptoms are mostly  
23 managed by medication is not supported by substantial evidence.  
24

25 The ALJ failed to offer specific and legitimate reasons for discounting Dr.  
26 Cline's opinions, particularly the 2017 opinion limiting Plaintiff to part-time  
27 sheltered work. The ALJ failed to offer any evidence that Dr. Cline's opinions  
28

1 were based on Plaintiff's reports, as opposed to Dr. Cline's professional judgment  
2 and objective observations.

3 On remand, the ALJ will reconsider Dr. Cline's opinions.

4 *b. Ms. Rumsey*

5 Plaintiff's treating therapist Brittany Rumsey, MSW, provided a statement  
6 on Plaintiff's behalf on July 19, 2017. Tr. 883-4. She reported she had worked with  
7 Plaintiff since February 2016 in "case management and individual therapy for  
8 psychosis." Tr. 883. She reported Plaintiff struggled with depression, "which made  
9 voices and visual hallucinations more intense and less tolerable," and that Plaintiff  
10 "presents with delusional thinking and disorganized thoughts" *Id.* She noted  
11 Plaintiff's past diagnoses including social phobia and amphetamine use disorder in  
12 2009, and her diagnosis in 2016 of other specified schizophrenia. *Id.*

13 She reported that "since June of 2016, Elisabeth has tried various  
14 medications with little relief of her voices, visual hallucinations, and other  
15 symptoms" *Id.* Ms. Rumsey reported "at this time [Plaintiff] has complied with  
16 mental health treatment" but her "mental status is unpredictable as she may come  
17 in reporting an increase in distressing symptoms and appear depressed and other  
18 days reports doing well, but continues to have difficulty focusing on specific  
19 tasks." *Id.* She reported "she often has a difficult time communicating and  
20 understanding questions asked" and "is disorganized in her thoughts." *Id.* Ms.  
21 Rumsey opined while "return to work has been discussed, [it] is not recommended  
22 at this time as she has not shown the ability to concentrate, understand instructions,  
23 and communicate clearly." *Id.*

24 The ALJ assigned Ms. Rumsey's opinion little weight because it was  
25 inconsistent with the record, treatment notes showed improvement with  
26 medication, and mental status exams showed intact concentration. Tr. 46. The ALJ  
27 noted Plaintiff was independent in "her personal [sic], performing chores, and  
28 preparing meals, thus demonstrating the ability to concentrate and understand,"

1 and that she “communicates her needs to providers including requesting hormone  
2 treatment.” *Id.* The ALJ concluded “Ms. Rumsey makes no mention of [Plaintiff’s]  
3 ongoing alcohol or other drug use, which undercuts the reliability of her opinion.”  
4 *Id.*

5 Plaintiff argues the ALJ erred in giving the opinion of Ms. Rumsey little  
6 weight because Ms. Rumsey is a treating provider, her opinion is consistent with  
7 her own treatment records and other medical opinions, and the ALJ ignored  
8 Plaintiff’s testimony about difficulty sustaining activity. ECF No. 18 at 10.  
9 Plaintiff argues the ability to request treatment does not demonstrate an ability to  
10 communicate effectively full-time in a workplace, and that the ALJ  
11 mischaracterizes the medical evidence because there is no indication of ongoing  
12 alcohol or drug use after August 2016. ECF No. 18 at 11-13.

13 Defendant argues the ALJ reasonably gave Ms. Rumsey less weight because  
14 she is not a treating or acceptable medical source, and that records from her own  
15 treatment history, as well as from other providers, contradict her reports that  
16 Plaintiff’s symptoms were unresponsive to treatment. ECF No. 19 at 6.

17 The Court finds the ALJ erred by failing to provide germane reasons to  
18 reject Ms. Rumsey’s opinion. A conflict with treatment notes, or the consistency  
19 with the medical record as a whole are germane reasons to reject an “other source”  
20 opinion. *Ghanim v. Colvin*, 763 F.3d 1154, 1161 (9th Cir. 2014). Here, however,  
21 substantial evidence does not support the ALJ’s conclusion that Ms. Rumsey’s  
22 opinion was inconsistent with treatment notes or the record as a whole.

23 As explained in the discussion of Dr. Cline’s opinion *supra*, Plaintiff’s  
24 mental health symptoms are not managed with medication. The ALJ also did not  
25 reference specific examples from Ms. Rumsey’s treatment notes or the notes of  
26 other providers that conflicted with Ms. Rumsey’s opinion. Tr. 46. The only  
27 support the ALJ provided here was the statement “mental status exams show intact  
28 concentration.” *Id.* Elsewhere in the decision, the ALJ did cite to seven places in



1 the record where Plaintiff was found to have intact, fair, or adequate concentration  
2 between 2016 and 2019. Tr. 39, 42, 44, 47, 577, 588, 749, 895-96, 923, 1108. Two  
3 of these cites, however, are to the same 2017 Dr. Cline exam discussed *supra*.  
4 Another mental status exam the ALJ cited as evidence of improvement because it  
5 showed intact concentration took place during Plaintiff's involuntary psychiatric  
6 hospitalization in June 2016. Tr. 895. Other findings that day included impaired  
7 memory, "other: can hear my thoughts," and Plaintiff's endorsement of auditory  
8 and visual hallucinations. *Id.* The ALJ selectively identified evidence in the record  
9 showing normal findings, but did not address abnormal findings within the same  
10 examination report and others that show more mixed results. Substantial evidence  
11 does not support the ALJ's conclusion that Ms. Rumsey's opinion was inconsistent  
12 with treatment notes or the record as a whole.

13 The ALJ's conclusion Plaintiff was independent in performing chores and  
14 preparing meals is also not supported by substantial evidence. The ALJ may  
15 consider a claimant's activities that undermine reported symptoms. *Rollins v.*  
16 *Massanari*, 261 F.3d 853, 857 (9th Cir. 2001). Here, however, in relying on  
17 Plaintiff's reported activities to reject Ms. Rumsey's opinion, the ALJ overstated  
18 Plaintiff's activities. The ALJ did not discuss Plaintiff's 2019 testimony that she  
19 could not clean her room without becoming distracted and stopping to rest. Tr.  
20 1513. Evidence shows Plaintiff's family did not want her to cook due to symptoms  
21 including command hallucinations. Tr. 375, 952, 1345. Ms. Rumsey's treatment  
22 notes from an appointment in June 2017 showed plaintiff reported "her voices ...  
23 told her to put her hand in boiling water she had on the stove." Tr. 952. In a  
24 January 2018 visit with Ms. Rumsey, Plaintiff's mother reported Plaintiff had been  
25 approved for "31 care provider hours that mom will manage for cooking,  
26 transportation, reminder of hygiene." Tr. 1345. Ms. Rumsey's treatment records  
27 indicate "there is concern with her cooking as the voices can be distracting and she  
28 doesn't want to hurt herself." *Id.*

1 The ALJ's conclusion that Ms. Rumsey's opinion is unreliable because she  
2 did not mention Plaintiff's ongoing alcohol or other drug use is also not supported  
3 by substantial evidence. Tr. 46. There is no evidence in the record of any substance  
4 use after August 2016, at the latest.<sup>7</sup> Tr. 908-912. Along with lack of any medical  
5 evidence to support ongoing alcohol or drug use, at an ER visit in June 2017  
6 Plaintiff's family reported she was one year sober, she reported she was three years  
7 sober in February 2019, and she lived in a drug and alcohol-free housing  
8 community with her mother, where she was regularly tested for substance use. Tr.  
9 355, 965, 1229.

10 The ALJ failed to offer germane reasons for discounting Ms. Rumsey's  
11 opinion. As this claim is being remanded for further proceedings, the ALJ shall  
12 reconsider Ms. Rumsey's opinion and all medical opinion evidence in completing  
13 the five-step process.

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15 <sup>7</sup> There appears to be an error in the medical record. Tr. 908-912. Here, the  
16 date of a June 28, 2016, psychiatric evaluation by Joseph Sutton, PA-C, is listed as  
17 "08/28/2017" in the header of each page of the document. *Id.* Mr. Sutton signed  
18 and dated the last page of this evaluation electronically, on June 30, 2016, but the  
19 header shows the "8/28" evaluation date on each page. *Id.* Mr. Sutton's notes  
20 clearly describe a specific episode of increased psychosis, which culminated in  
21 Plaintiff's involuntary hospitalization June 28-July 1, 2016. The order for  
22 admission to the inpatient facility on that date is also signed by Mr. Sutton. Tr.  
23 455, 458-59. The date of this evaluation is important because it is the last time any  
24 ongoing substance use is reported in the record. The ALJ relied on the date of the  
25 document to discredit Plaintiff because she appeared to reference alcohol use again  
26 in August 2016. However, the actual evaluation was signed by Plaintiff's provider  
27 two months earlier in June 2016.  
28

## 2. Plaintiff's subjective statements

Plaintiff contends the ALJ erred by improperly rejecting her subjective complaints. ECF No. 18 at 16.

It is the province of the ALJ to make determinations regarding a claimant's subjective statements. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). However, the ALJ's findings must be supported by specific, cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Once the claimant produces medical evidence of an underlying medical impairment, the ALJ may not discredit testimony as to the severity of an impairment merely because it is unsupported by medical evidence. *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998). Absent affirmative evidence of malingering, the ALJ's reasons for rejecting the claimant's testimony must be "specific, clear and convincing." *Smolen v. Chater*, 80 F.3d 1273, 1281 (9th Cir. 1996); *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1996). "General findings are insufficient: rather the ALJ must identify what testimony is not credible and what evidence undermines the claimant's complaints." *Lester*, 81 F.3d at 834; *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir. 1993).

The ALJ concluded Plaintiff's medically determinable impairments could reasonably be expected to cause the alleged symptoms; however, Plaintiff's statements concerning the intensity, persistence and limiting effects of those symptoms were not entirely consistent with the medical evidence and other evidence in the record. Tr. 41. The ALJ offered the following additional reasons for disregarding Plaintiff's subjective complaints: Plaintiff's complaints were out of proportion to the objective medical evidence of record; Plaintiff's substance use/abuse suggests that her symptoms are at least in part substance induced or increased with use; she typically responds to medication management and reports improved functioning despite voices; and the longitudinal record shows overall improvement in symptoms and functioning with medications. Tr. 41-45.

1 Plaintiff argues the ALJ failed to provide clear and convincing reasons for  
2 rejecting Plaintiff's symptom testimony because the ALJ simply recited the  
3 medical evidence in support of his RFC, erroneously rejected symptom testimony  
4 for lack of objective medical evidence, the record does not support the ALJ's  
5 conclusion that Plaintiff improved to the point of being able to work, no doctor had  
6 opined Plaintiff would be able to function effectively in a workplace after full  
7 review of the medical record, and Plaintiff's remote history of drug use is not a  
8 reason to reject her symptom testimony. ECF No. 18 at 16-19. Defendant argues  
9 the ALJ reasonably weighed Plaintiff's allegations because the longitudinal record  
10 shows overall improvement in symptoms and functioning with medication. ECF  
11 No. 19 at 2-4.

12 The ALJ's evaluation of Plaintiff's symptom claims and the resulting  
13 limitations largely relies on the ALJ's assessment of the medical evidence. Having  
14 determined a remand is necessary to readdress the medical opinions of Dr. Cline  
15 and Ms. Rumsey, any reevaluation must necessarily entail reassessment of  
16 Plaintiff's subjective symptom claims. Thus, the Court need not reach this issue  
17 and on remand the ALJ must also carefully reevaluate Plaintiff's subjective  
18 complaints in the context of the entire record.

### 19 CONCLUSION

20 Plaintiff argues the decision should be reversed and remanded for the  
21 payment of benefits. The Court has the discretion to remand the case for additional  
22 evidence and findings or to award benefits. *Smolen v. Chater*, 80 F.3d 1273, 1292  
23 (9th Cir. 1996). The Court may award benefits if the record is fully developed and  
24 further administrative proceedings would serve no useful purpose. *Id.* Remand is  
25 appropriate when additional administrative proceedings could remedy defects.  
26 *Rodriguez v. Bowen*, 876 F.2d 759, 763 (9th Cir. 1989). In this case, the Court  
27 finds that further development is necessary for a proper determination.  
28

1 The ALJ's decision is not supported by substantial evidence. On remand, the  
2 ALJ shall reevaluate Plaintiff's subjective complaints and all the medical evidence  
3 of record, making findings on each of the five steps of the sequential evaluation  
4 process. The ALJ shall obtain supplemental testimony from a medical expert and  
5 take into consideration any other evidence or testimony relevant to Plaintiff's  
6 disability claim.

7 Accordingly, **IT IS ORDERED:**

8 1. Plaintiff's Motion for Summary Judgment, **ECF No. 18**, is  
9 **GRANTED.**

10 2. Defendant's Motion for Summary Judgment, **ECF No. 19**, is  
11 **DENIED.**

12 3. The matter is **REMANDED** to the Commissioner for additional  
13 proceedings consistent with this Order.

14 4. An application for attorney fees may be filed by separate motion.

15 The District Court Executive is directed to file this Order and provide a copy  
16 to counsel for Plaintiff and Defendant. Judgment shall be entered for Plaintiff and  
17 the file shall be **CLOSED.**

18 DATED October 6, 2021.



A handwritten signature in black ink, appearing to read "M", is written over a horizontal line.

JOHN T. RODGERS  
UNITED STATES MAGISTRATE JUDGE